

**LETTER OPINION**  
**80-109**

June 6, 1980 (OPINION)

Mr. Edward Klecker  
Director of Institutions  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Klecker:

This is in response to your letter of May 19, 1980, wherein you request an opinion of this office relative to section 15-61-05 of the North Dakota Century Code, relative to disposition or sale of state surplus property. You submit the following facts and question in your letter:

There is considerable property in state institutions and agencies not used because of its unserviceable condition. There is no one in state government who wants this property nor is there any need or use for it in the political subdivision. This excess used property is such that it does not merit discarding as junk, and some of it, if restored or refurbished could be sold at public auction.

The North Dakota State Penitentiary does not have enough work for its growing inmate population. They do have the equipment and ability to restore this surplus property. Permission and assistance to do so has been requested from the Department of Accounts and Purchases (A & P). The prison on a "backhaul" could collect, at little expense, this surplus property and recondition it in their facilities and make it ready for a public auction.

Attached you will find A & P's letter of approval, but under conditions which make it impossible for the prison industries to take on this venture because they depend on their earnings for operating costs. It is our position that the restrictions imposed by A & P are contrary to the provisions of section 15-61-05 as amended in the 1979 interim supplement to replace volume 3 of N.D.C.C.

Also attached is our legal counsel's memorandum to Mr. Olson by A & P. We do not believe that the surplus property law cited above requires that all auction proceeds must go to the state's general fund. The last paragraph of the statute specifically states, "less sales costs". The language does not, we believe, limit the costs to sales commission or advertising costs, but would include the cost of getting the items ready for sale.

We respectfully seek your opinion on this matter because of the opportunity, if legally permissible, it would provide for additional labor for our growing number of unemployed inmates. It would also serve to clear out institutional storage areas by aiding the intent of the surplus property law to get rid of

such items, and provide a fiscal benefit to the general fund which otherwise would not be available.

You have correctly noted the statute in question and its provision that "All proceeds of property sold under authority of this section, less sales costs, shall be deposited in the general fund \* \* \*." (Emphasis added). The question hinges solely on the interpretation given to the words "less sales costs".

Noting the history of the statute, we would note that both under the said section 15-61-05 as originally enacted by the 1965 Legislature in Chapter 156 of the 1965 Session Laws, and subsequent amendments thereto, including Chapter 179 of the 1975 Session Laws, the statute did not provide for the deduction of "sales costs", the same becoming effective by amendment under Chapter 265 of the 1979 Session Laws. We know of no other statute that would modify, define or restrict the provision other than costs which are not reasonably involved in the sale of such property. We believe that to construe such provision as being limited to advertising and sales commissions is an extremely narrow interpretation of "sales costs". We would note that undoubtedly there will be some costs involved both in the relocation, for sales purposes, as well as transportation of such property from the various state agencies to the place of sale. We also believe that there may exist other costs in getting such property ready for sale and that such costs could also involve preparation to make such property saleable.

Accordingly, we believe that the proposed reconditioning and transportation of such property is permissible under the statute and that such costs involved in the transportation and reconditioning in preparation for sale would constitute "sales costs", which may legally be deducted from the sales proceeds before deposit in the general fund.

We trust that the foregoing will adequately set forth our opinion on the matter submitted and that the same will be adequate for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General